

REMARKS

Claims 1, 2, and 4-41 are pending in the present application, with claims 16-29 and 37-41 having been withdrawn from consideration. Claim 3 has been cancelled. Claims 1, 2, 30, and 31 have been amended. Of the claims currently under consideration, claims 1 and 30 are independent claims.

The Examiner is respectfully requested to reconsider the outstanding rejections in view of the above amendments and the following remarks.

Allowable Subject Matter

Applicants acknowledge the Examiner's indication that claims 4, 6-8, 14, 15, 32, 35, and 36 contain allowable subject matter. It is further noted that the Examiner has withdrawn her previous indication that claims 3 and 5 are allowable,¹ issuing new grounds of rejection for these claims.

Finality of Office Action Should be Withdrawn

Applicants respectfully submit that the new grounds of rejection for claims 3 and 5 were *not* necessitated by amendment. Thus, the finality of the present Office Action is improper and should be withdrawn.

On August 9, 2006, this issue was discussed during a telephonic interview between Examiner Heather Jones and Applicants' representative, Jason Rhodes. As a result, an agreement was reached between that the finality of the present Office Action would be withdrawn. Accordingly, the Examiner agreed that this Amendment After Final, including the above claim amendments, would be entered as of right and considered under non-final status.

¹ See Office Action of September 7, 2005 at pages 6-7.

Rejection Under 35 U.S.C. § 103

Claims 1-3, 5, 9, 11-13, 30, 31, 33, and 34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,606,117 to Windle (hereafter “Windle”) in view of U.S. Patent No. 6,539,100 to Amir et al. (hereafter “Amir”). This rejection is respectfully traversed.

Initially, Applicants point out that the rejection of claim 3 has been rendered moot by the cancellation of this claim.

As to the remaining claims, Applicants first point out the following statement in MPEP § 2143.03 regarding a proper rejection under 35 U.S.C. § 103:

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.
In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

It is respectfully submitted that Windle and Amir fail to teach or suggest all of the features of the claimed invention.

As amended, independent claim 1 now recites an extractor adapted to identify candidate aimed objects in the images based on depth information indicating a distance from the camera to parts of the subject. Similarly, independent claim 30 has been amended to recite identifying at least one candidate aimed object in the image based on depth information indicating a distance from a photographer to at least part of the subject.

In page 4 of the Office Action, the Examiner relies on Amir to teach an extracting condition based on depth information of the image indicating the distance to each part of the subject, citing col. 7, lines 26-31.

The purpose of Amir’s invention is to analyze a scene containing multiple subjects to determine which pupils belong to which subjects (abstract; col. 2, lines 8-10). Amir’s invention

first searches the scene to identify or locate pupil candidates, and then “filters” the identified pupil candidates in order to eliminate false candidates (Fig. 3).

Amir describes the process of filtering out false candidates is described in col. 7, lines 9-41, a portion of which is reproduced below:

Filtering Single Pupil Candidates

Having identified a number of pupil candidates (possible 10 pupils) in step 304, the computer 102 proceeds to filter individual candidates to eliminate false candidates (step 306). This operation may consider a number of different features to eliminate candidates that are not actually pupils. For instance, the following features of each pupil candidate 15 may be evaluated:

the pupil candidate’s ratio of horizontal size to vertical size (“aspect ratio”), where an aspect ratio of 1:1 (vertical:horizontal) is sought to filter out motion disparities that might be mistaken for pupils. 20

the pupil candidate’s size, where a sufficiently small size is sought to filter out reflective emblems on clothing, such as so-called “retro” reflectors on running shoes and jackets, which may otherwise be mistaken as pupils. 25

the pupil candidate’s range, where subjects are expected to be positioned a certain distance away; this information may be derived from the camera’s focal length, using two cameras to perceive depth, or using other distance sensing techniques or hardware. 30

(portion cited for claimed “depth information”)

Here, Amir teaches that depth information is derived for *previously identified pupil candidates*. Amir is only interested in using depth information in order to determine whether a particular pupil candidate is a “false candidate.”

As to identifying pupil candidates, Amir describes this process in col. 6, line 47 – col. 7, line 7. It is respectfully submitted that this portion of Amir fails to teach or suggest using depth information of the image to identify or location the pupil candidates.

Thus, Applicants respectfully submit that Windle and Amir, taken separately or in combination with one another, do not teach or suggest identifying candidate aimed objects in the

image based on depth information, as claimed. At least for this reason, Applicants submit that independent claims 1 and 30 are allowable over Windle and Amir. Further, claims 2, 5, 9, 11-13, 31, 33, and 34 are allowable at least by virtue of their dependency on allowable claims. As such, the Examiner is respectfully requested to reconsider and withdraw this rejection.

Claim 10 stands rejected under § 103(a) as being unpatentable over Windle and Amir, and further in view of U.S. Patent No. 4,881,127 to Isoguchi et al. (hereafter "Isoguchi"). Applicants respectfully submit that Isoguchi fails to remedy the deficiencies of Windle and Amir, as set forth above in connection with independent claim 1. Specifically, Isoguchi is being relied upon in the rejection merely to teach an illuminator illuminating the subject based on a timing signal (see Office Action at page 6). Accordingly, Applicants submit that claim 10 is allowable at least by virtue of its dependency on independent claim 1. Reconsideration and withdrawal of this rejection is, thus, respectfully requested.

Conclusion

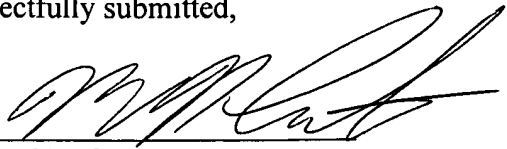
In view of the Examiner's indication that the finality of the present Office Action would be withdrawn, Applicants request entry and consideration of this Amendment After Final as of right and under non-final status. In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider the outstanding rejections and issue a Notice of Allowance in the present application.

Should the Examiner believe that any outstanding matters remain in the present application, the Examiner is respectfully requested to contact Jason W. Rhodes (Reg. No. 47,305) at the telephone number of the undersigned to discuss the present application in an effort to expedite prosecution.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Date: August 23, 2006

Respectfully submitted,

By 
Michael R. Cammarata
Registration No.: 39,491
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road
Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant